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Manufacturing Company, Incorporated. From a decree refusing an injunction, complainants appeal. Affirmed.

*Tavener & Bauserman*, of Woodstock, for appellants.

*F. H. Brumback*, of Woodstock, for appellee.

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CURTIS & SHUMWAY, Inc. v. WILLIAMS.

Nov. 11, 1915.

[86 S. E. 848.]

**1. Master and Servant (§ 177\*)—Injuries to Servant—Fellow Servant.**—Where injury to a servant is caused directly by the act or omission of a fellow servant, he cannot recover from the master for such injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 307, 352, 353; Dec. Dig. § 177.\* 1 Va. Law Reg. 617; 5 Va. Law Reg. 637, 868.]

**2. Master and Servant (§ 188\*)—Injuries to Servant—Fellow Servant—Who Are.**—The general manager of defendant, who is also head of the distinct department, is not a fellow servant, so as to prevent plaintiff's recovery for injuries caused by his negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 436; Dec. Dig. § 188.\* 13 Va. Law Reg. 492, 760.]

**3. Master and Servant (§ 278\*)—Injuries to Servant—Character of Employment.**—Evidence held insufficient to show that plaintiff, injured while at work, was required to perform duties outside of his employment, and was therefore entitled to warning by his master as to the dangers of such employment.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.\*]

**4. Trial (§ 233\*)—Instructions—Form.**—An instruction that, if the jury believed that plaintiff was injured by the negligence of defendant as charged in the first count of the declaration, they should find for plaintiff, was improper, where the count covers 3½ pages of the record, thus requiring the jury to extract from it the pertinent matter on which to base their verdict.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 527-530; Dec. Dig. § 233.\*]

**5. Master and Servant (§ 150\*)—Injury to Servant—Duties of Master—Warning and Instruction.**—The rule that it is the master's duty to warn and instruct the servant as to dangers incident to the work which are not open and obvious must be applied, subject to the rule that a person of matured age and apparently possessed of average intelligence seeking employment may be presumed by the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

employer to be competent to discharge the duties of the position which he seeks.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 297, 299-302, 305, 307; Dec. Dig. § 150.\* 9 Va.-W. Va. Enc. Dig. 686.]

**6. Master and Servant (§ 150\*)—Injury to Servant—Duties of Master—Warnings.**—The master is not bound to warn his servant of extraordinary dangers or incidents of which he has no knowledge, and of which he could not have knowledge by the exercise of reasonable care and caution.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 297, 299-302, 305-307; Dec. Dig. § 150.\*]

Error to Circuit Court, Rockingham County.

Action by L. Thompson Williams against Curtis & Shumway, Incorporated. From a judgment for plaintiff, defendant brings error. Reversed and remanded.

*Coleman, Ea. et al.* & *Coleman*, of Lynchburg, for plaintiff in error.

*Volney E. Howard*, of Lynchburg, and *Wm. K. Allen*, of Amherst, for defendant in error.

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SCOTT v. BRAME et al.

Nov. 11, 1915.

[86 S. E. 850.]

**Corporations (§ 123\*)—Pledge of Stock—Abandonment of Interest—Burden of Proof.**—One having a lien on stocks, under a deposit thereof as collateral, claiming that another having an interest therein subject to such lien has waived or abandoned his rights therein, has the burden of proof, which he can maintain only by proof of clear and unmistakable acts indicating a purpose to repudiate ownership.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 481, 491, 507-512, 537, 539-546, 569, 618; Dec. Dig. § 123.\* 3 Va.-W. Va. Enc. Dig. 559.]

Appeal from Circuit Court, Floyd County.

Suit by J. T. Draper against S. R. Brame and H. F. Scott. From part of the decree, Scott appeals, Brame and Draper assigning cross-errors. Reversed in part and affirmed in part.

*Luther G. Scott*, of Bluefield, W. Va., for appellant.

*R. F. Tompkins* and *Sowder & Burwell*, all of Floyd, and *C. B. Moomaw*, of Roanoke, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.